SUPREME COURT OF THE UNITED STATES.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1960.

No. 491.

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,
Petitioner,

vs.

CHICAGO AND NORTHWESTERN RAILWAY COMPANY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF.

I.

The decision of the Court of Appeals for the Eighth Circuit in the case at bar is directly in conflict with the decision of the Court of Appeals for the Fifth Circuit in Ft. Worth & Denver Railway Company v. Threadgill, et al., 228 F. (2d) 307. Since a conflict between decisions of the two circuits is presented, this Court should grant certiorari and settle the question.

In our petition for certiorari we stated that we had found no conflict between the decision below and that of the Court of Appeals for any other circuit. It now develops that this is erroneous, for the Fifth Circuit Court

by state law. We may concede the correctness of this statement in the abstract. This contention merely begs the question presented by this record, for the issue is whether Iowa law is applicable, or has been completely superseded by the Safety Appliance Act so far as Northwestern's liability to Kleppe is concerned.

The Fifth Circuit Court of Appeals holds that there is no "common" liability when one tort-feasor is responsible under a Federal statute and the other only for common law negligence. Judge Graven in the District Court was in agreement, but resorted to a supposed common law liability to Kleppe for negligence on the part of the two railroads to find the requisite "common" liability. Northwestern's common law liability was completely wiped out and superseded by the Safety Appliance Act. It is, therefore, incorrect to say that the question of contribution depends solely on Iowa law under the facts of this case. If Iowa common law with respect to Northwestern's liability for Kleppe's injury were applicable, then Iowa law would, of course, govern. But here Iowa law has been superseded and is no longer applicable. Consequently, it may not be made a basis for "common" liability to Kleppe.

III.

The Iowa decision of Van Tiger v. Hendricks, 249 Iowa 25, 85 N. W. (2d) 543, recognizes that a "common" liability to the injured person is a requisite to contribution.

At pages 5 to 7, inclusive, counsel for respondent urge that the Iowa rule allowing contribution between joint tort-feasors does not require a "common" liability between them. A reading of the recent Iowa case of **Van Tiger v. Hendricks**, supra, is sufficient to demonstrate that Iowa requires proof of a common liability as a prerequisite to contribution. Furthermore, it is universally held that in

the absence of a common liability there is no right of contribution between two or more persons who by their combined negligence injure a third.

IV.

Whether a Federal statute has superseded state law constitutes a Federal question.

At page 8 of their Brief in opposition counsel for respondent say no Federal question is presented by the record under consideration. They urge the case involves only questions of Iowa law, and, in any event, is of importance only to the immediate parties, not to the public. Of course, the scope and effect of an Act of Congress always presents a Federal question. No citation of authority is required to support this elementary rule.

Equally erroneous is the respondent's contention that no question of widespread interest to the railroad industry is presented. We need not here repeat what was said in our argument upon the Petition for Certiorari.

CONCLUSION.

A direct conflict exists between the decision of the Court of Appeals for the Eighth Circuit in the case at bar and that of the Court of Appeals for the Fifth Circuit in the **Threadgill** case (228 F. [2d] 307). It is apparent that the Eighth Circuit is committed to a rule diametrically opposite to that propounded by the Fifth Circuit. In view of this conflict and of the nature of the case and the widespread importance to the railroad industry of having a final determination of the questions presented, we urge that this case is one requiring the exercise of the supervisory jurisdiction of this Court over subordinate federal

tribunals. Only this Court has the power to finally determine the question and resolve the conflict thus presented.

Respectfully submitted,

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